



Connecting Central Oregon's Water, Land & Environment

January 13, 2023

RE: 60-Day Notice of Intent to Sue

On January 12, 2023, the Center for Biological Diversity (CBD) sent a letter to the U.S. Fish and Wildlife Service (Service) and the U.S. Bureau of Reclamation (Reclamation), alleging that the two federal agencies are violating the federal Endangered Species Act (ESA). Among other things, the letter alleges that Reclamation is violating the ESA by continuing to operate the Deschutes River Basin Project, and that the Service is violating the ESA because it approved the Deschutes Basin Habitat Conservation Plan (HCP) and issued an incidental take permit under the ESA to the DBBC irrigation districts. At its core, CBD's allegation is that the Service and Reclamation are not doing enough to protect the Oregon spotted frog, a species that is listed as threatened under the ESA. The letter serves to notify the Service and Reclamation that CBD intends to sue them under the citizen suit provisions of the ESA.

As required by the ESA, a party must provide 60 days' notice before it may bring a citizen suit. Thus, it appears the earliest that CBD will formally sue the agencies is March 14, 2023. We would note that CBD has not indicated in its letter that it intends to sue the irrigation districts, and as such, when CBD does file suit, the Service and Reclamation will be the defendants. Also, the letter does not allege that the districts are failing to implement the conservation measures included in the HCP or are otherwise failing to comply with the terms and conditions contained in the permit issued to them by the Service. Rather, CBD is asserting that the terms and conditions in the permit should be even more stringent than what's currently required.

The new CBD notice of intent to sue follows prior litigation brought in 2015 by CBD and WaterWatch of Oregon (WaterWatch) against the Service, Reclamation, and five of the irrigation districts. In that litigation, CBD and WaterWatch moved for a preliminary injunction to significantly alter irrigation water storage and use in the basin. The U.S. District Court of Oregon denied that motion. The litigation ended in a settlement, pursuant to which the irrigation districts agreed to complete the HCP. The HCP was completed and approved by the Service at the end of 2020, and the irrigation districts have been implementing the HCP and honoring their commitments since that time.

We will continue to monitor actions that may result from CBD's notice. In the meantime, the districts remain fully committed to following the terms and conditions contained in their incidental take permit issued by the U.S. Fish and Wildlife Service under section 10 of the ESA. Moreover, we intend to take necessary and appropriate actions to ensure that our permit remains valid and continues to provide the districts with the certainty they need to store and deliver irrigation water to their patrons.

The DBBC strongly believes that our communities should continue to work collaboratively and together from within rather than take direction from the outside, and we remain firmly committed to implementing the conservation measures outlined in the Deschutes Basin Habitat Conservation Plan.

PO Box 919 - Madras, OR 97741

Deschutes Basin Board of Control Member Districts

*Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District*

DBBC President – Craig Horrell, 541-548-6047; chorrell@coid.org